

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ralf Grobleben et al
Application Number: 10/567,321
Filing Date: 02/07/2006
Group Art Unit: 3637
Examiner: Janet Marie Wilkens
Title: SHELF BASE FOR A REFRIGERATOR

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Commissioner for Patents
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REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

In addition to the Notice of Appeal which is being concurrently filed, Applicants respectfully request a Pre-Appeal Brief Conference to consider the issues raised in the Final Office Action dated December 11, 2008. Please charge Deposit Account No. 502786 for any deficiency or overpayment.

The Rejections under 35 U.S.C. § 102

In the Office Action, claims 15, 18, 22, 24, 25, 27, and 29-32 are rejected under 35 U.S.C. §102 (b) as being anticipated by the Whalen reference (US Patent No. 2,103,885). Claims 30, 32, 34, and 35 are rejected under 35 U.S.C. §102 (b) as being anticipated by the Verchere reference (US Patent No. 5,036,990). Applicants respectfully traverse at least these rejections.

The Rejections based on the Whalen Reference

A. The Office Action mischaracterizes the Whalen reference

The Whalen reference very clearly does not disclose a shelf base having a plate, lower retaining rails extending along a lower side of the plate for attachment for a support

for holding chilled goods, and upper retaining rails for another support extend along the upper side of the plate, as recited by independent claim 15. These features are important for providing a support for chilled goods to be attached to the upper side of the shelf plate, as well as the lower side of the shelf plate, thereby improving the diversity of possibilities for utilizing the space of such a shelf base.

Instead, the Whalen reference discloses a shelf 9 having an open cross bar or rod construction, not a plate.

The Office Action alleges that the member 26 of the Whalen reference is considered to be a plate. However, contrary to the assertions in the Office Action, the Whalen reference very clearly discloses that the member 26 is a cross bar, not a plate. Thus, these assertions in the Office Action amount to a clear error.

Whalen very clearly does not disclose a shelf base having a plate, as recited by independent claim 15.

Applicants respectfully request withdrawal of this rejection.

B. The Office Action mischaracterizes the Whalen reference

The Whalen reference does not disclose at least a plate having a front edge, a rear edge, a lower side, and an upper side, as recited by independent claim 30. Additionally, the Whalen reference does not disclose at least that the upper retaining rails and the lower retaining rails are not secured to one another along extents thereof between the front edge of the plate and the rear edge of the plate, as recited in claim 30.

The Office Action alleges that the member 26 of the Whalen reference is considered to be a plate. However, contrary to the assertions in the Office Action, the Whalen reference very clearly discloses that the member 26 is a cross bar, not a plate. The Whalen reference certainly does not disclose a shelf base having a plate having a front edge, a rear edge, a lower side, and an upper side, as recited in claim 30.

Moreover, the Whalen reference very clearly fails to disclose at least that the upper retaining rails and the lower retaining rails are not secured to one another along extents thereof between the front edge of the plate and the rear edge of the plate, as recited in claim

30. Instead, the Whalen reference very clearly discloses that its upper and lower retaining rails are connected to one another mid-way along the extent.

Thus, these assertions in the Office Action amount to a clear error.

Applicants respectfully request withdrawal of this rejection.

The Rejections based on the Verchere Reference

A. The Office Action mischaracterizes the Verchere reference:

The Verchere reference does not disclose the features of the claimed invention including a shelf base having upper retaining rails for another support extend along the upper side of the plate, as recited by independent claim 15.

Instead, the Verchere reference merely discloses suspending one or more trays 1 from the lower retaining rails 28, 33, not the upper retaining rails 27, 32. Thus, these assertions in the Office Action amount to a clear error.

Verchere does not disclose a shelf base having upper retaining rails for another support extend along the upper side of the plate, as recited by independent claim 15.

Applicants respectfully request withdrawal of this rejection.

B. The Office Action mischaracterizes the Verchere reference:

The Verchere reference does not disclose the features of the claimed invention including at least that said upper retaining rails for attachment of the second support that holds chilled goods such that the second support can be extended relative to said upper retaining rails from an inward location into an outward location and can be retracted relative to said upper retaining rails from said outward location into said inward location, as recited in claim 30.

Additionally, the Verchere reference does not disclose at least said front end of said upper retaining rails and said front end of said lower retaining rails being secured to one another across at least one of said front edge of said plate and said rear edge of said plate such that said upper retaining rails and said lower retaining rails are secured against movement relative to said plate in said extension and retraction directions of the first support and the second support with respect to said shelf base, as recited in claim 30.

The Verchere reference very clearly does not disclose these features. Instead, the Verchere reference merely discloses suspending one or more trays 1 from the lower retaining rails 28, 33. The Verchere reference does not disclose attachment of a support to the upper retaining rails 27, 32.

Assuming in *arguendo* that a support could be attached to the upper retaining rails 27, 32, the structure of the hooks 3 and 4 of the Verchere reference very clearly would prohibit the second support from being extended relative to the upper retaining rails from an inward location into an outward location and from being retracted relative to the upper retaining rails from the outward location into the inward location, as recited in claim 30.

Thus, these assertions in the Office Action amount to a clear error.

Applicants respectfully request withdrawal of this rejection.

C. The Office Action clearly omits one or more elements of claim 30:

The Office Action fails to identify support for all of the features of claim 30 in the Verchere reference, and therefore, omits one or more elements needed for a *prima facie* rejection.

Claim 30 recites the front end of said upper retaining rails and said front end of said lower retaining rails being secured to one another across at least one of said front edge of said plate and said rear edge of said plate such that said upper retaining rails and said lower retaining rails are secured against movement relative to said plate in said extension and retraction directions of the first support and the second support with respect to said shelf base.

The Office Action does not cite any support for these features in the Verchere reference. See Office Action dated December 11, 2008, at page 3, last paragraph.

The Verchere reference does not disclose at least these features. The Verchere reference is completely silent with respect to securing the alleged upper and lower retaining rails 3, 4 against movement relative to the alleged plate 40 in the extension and retraction directions, as recited in claim 30.

Therefore, the Office Action clearly omits one or more elements needed for a *prima facie* rejection.

Applicants respectfully request withdrawal of this rejection.

The Rejections under 35 U.S.C. § 103

Applicants respectfully submit that the Avery reference, the Hearst reference, and the Frank reference do not remedy the deficiencies of the Whalen reference and the Verchere reference, respectively, for the reasons set forth on pages 13-15 of the Amendment D filed on April 13, 2009.

Also, the Office Action may not rely upon the Frank reference under 35 U.S.C. § 103 because the Frank reference is non-analogous art since the Frank reference clearly is not within the field of Applicants' endeavor. Moreover, the subject matter of the Frank reference logically would not have commended itself to an inventor's attention in considering his or her invention as a whole.

Applicants respectfully request withdrawal of these rejections.

CONCLUSION

In view of the above, allowance of claims 15, 18-20, and 22-37 are respectfully requested. If the Examiner has any questions regarding this Request, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

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